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Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/419,856 10/19/99 MAPLES

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EXAMINER

RAJGURU, U

ART UNIT

PAPER NUMBER

1711

DATE MAILED:

02/17/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-15 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-15 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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1. Claim 10 contains the trademark/trade name PR-240 (line 5), CT-131 (line 9), Lorama ECO R1 (line 10), FR4 C405 484 (line 12), 5099 (line 14), Antifoam A (line 5), Surfynol 465 (line 16) and Rheox Bentone A.D. (line 17). Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe the respective components of claimed formulation listed in the specification and, accordingly, the identification/description is indefinite.

2. Claim 11 contains the trademark/trade name same as listed above for claim 10. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is

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10-02-2000

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used to identify/describe the respective components of claimed formulation and, accordingly, the identification/description is indefinite.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholz et al (USP 5749948) in view of von Bonin et al (USP 4992481) and Fulmer (USP 4349494) (von Bonin and Fulmer are of record on PTO-1449, paper no 2).

Scholz discloses expandable flame-retardant coating compositions comprising (a) 4-25% by wt of a ~~film~~ ^{film} forming binder, (b) 10-40% by wt of ammonium polyphosphate, (c) 8-40% by wt of a substance that is carbonized under heat, (d) 6-25% by wt of an expansion agent, optionally

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dispersants and fillers (abstract). Polyester-polyurethane dispersion is listed in col 2 lines 61-63.

Melamine and pentaerythritol are taught in col 2, lines 29-32.

Scholz does not disclose specifically the claimed surfactants (of instant claim 1) as well as nylon carpet (of instant claims 12-15).

von Bonin discloses fire retardant elements which can be used as sealants for preventive fireproofing (col 1, lines 4-10). It is preferred to have flame proofing impregnations based on water or based on aqueous solutions and/or dispersions (col 5, lines 10-17). In this ~~present~~ ^{respected} film-forming polyurethane dispersion has been proved to be useful (col 16, lines 46-68). *WJR*

Therefore it would have been obvious to use the polyurethane dispersion of von Bonin as a binder of choice into the composition of Scholz with the expectation of reducing toxic fumes and still maintaining same performance of the composition.

Fulmer discloses a flame retardant product having a foamed core and fire-retardant protective layer. Patentee teaches the use of surfactants to insure uniform mixing of components (col 7, lines 4-8) specifically carbon compounds such as saccharides.

It would have been obvious to use surfactants (taught by Fulmer) into the composition of Scholz with the expectation of achieving better dispersion and mixing of all ingredients.


4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scholz et al (USP 574948) in view of von Bonin et al (USP 4992481) and Fulmer (USP 4349494) as applied to claim 1 above, and further in view of Trocine et al (USP 5162394).

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According to Trocine, polyols are added to fire-retardant compositions to improve flame-retardancy (col 3, line 63; col 4, line 5) and polysaccharides are suitable for this purpose.

It would therefore be obvious to add polysaccharides to composition of Scholz to improve its performance.

5. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholz et al (USP 5749948) in view of von Bonin et al (USP 4992481) Fulmer (USP 4349494) as applied to claim 1 above, and further in view of Shore (USP 5168605).

Shore discloses flame-retardant polyamide carpets which are prepared from polyamide  fibers having flame retardants additive~~s~~ added to them.

In col 4, lines 32-37, patentee teaches the use of backings for a carpet.

It would have therefore been obvious prepare a fire retardant nylon carpet by adhering a layer of composition of Scholz to a nylon carpet (which may not be fire-retardant by itself).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to U.K. Rajguru whose telephone number is (703) 308-3224. The examiner can normally be reached on Monday-Friday from 9:30 am to 6:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Seidleck, can be reached on (703) 308-2462. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 3080661.

Rajguru/mm 

February 11, 2000

James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700